

AMENDED IN SENATE JULY 1, 2009  
AMENDED IN ASSEMBLY JUNE 1, 2009  
AMENDED IN ASSEMBLY MARCH 27, 2009  
CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 155**

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**Introduced by Assembly Member Mendoza**  
**(Principal coauthor: Assembly Member Torrico)**  
**(Coauthors: Assembly Members Brownley, Coto, De Leon, Fuentes,**  
**Furutani, Krekorian, Lieu, Ma, Nava, John A. Perez, V. Manuel**  
**Perez, Price, and Yamada)**  
(Coauthors: Senators DeSaulnier, Liu, and Wiggins)

January 26, 2009

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An act to amend Section 53760 of, and to add Sections 8860, 8861, 8862, 8863, ~~and 8864~~ 8864, *and* 8865 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 155, as amended, Mendoza. Local government: bankruptcy proceedings.

Under existing law, any taxing agency or instrumentality of the state may file a petition and prosecute to completion bankruptcy proceedings permitted under the laws of the United States.

This bill would provide that a local public entity may only file under federal bankruptcy law with the approval of the California Debt and Investment Advisory Commission, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature hereby finds and declares all of  
2 the following:
- 3 (a) The California Constitution and current statutory law provide  
4 for a continuity and interdependence between state and local  
5 government entities. Seeking financial relief through the provisions  
6 of Chapter 9 (commencing with Section 901 of Title 11) of the  
7 United States Code imposes costs on a municipality, potentially  
8 exceeding \$1 million. It can reduce service levels to the taxpayers  
9 and residents of a municipality. In some circumstances, it can have  
10 major short- and long-term fiscal consequences to the municipality,  
11 the surrounding local public entities, and the state. In 2009, bond  
12 counsel stated that “filing for bankruptcy protection under Chapter  
13 9 should be considered a last resort, to be effected only after every  
14 effort has been made to avoid it.”
- 15 (b) The Legislature has an interest in monitoring the conditions  
16 under which local entities seek Chapter 9 protection. The relief  
17 provided through the federal courts can affect state and municipal  
18 government service levels, debt, and contracts. The Legislature  
19 also has a strong interest in ensuring adequate disclosure of the  
20 conditions under which a municipality may seek Chapter 9  
21 protection.
- 22 (c) To the extent financial relief granted through Chapter 9 can  
23 affect debt service payments, the state’s investors and bondholders  
24 have a direct interest in the Bankruptcy Court’s decisions.
- 25 (d) The state has established a statewide system of public  
26 employee collective bargaining for state and local government  
27 employers and employees intended to protect the state’s interest  
28 in promoting peaceful and harmonious labor relations and  
29 preventing work stoppages. The validity and enforceability of  
30 contracts arrived at through collective bargaining are essential to  
31 maintaining labor peace and the uninterrupted delivery of vital  
32 public services, and these agreements may be subject to review  
33 and amendment or rescission in the event of a Chapter 9 bankruptcy  
34 proceeding.
- 35 (e) The state has established and administers statewide pension  
36 systems that provide retirement and health benefits to state and  
37 local agency employees, many of whose benefits rely on contracts  
38 negotiated between local agencies and the California Public

1 Employees' Retirement System, and that may be subject to review  
2 and amendment or rescission in the event of a Chapter 9 bankruptcy  
3 proceeding.

4 (f) California is one of only 12 states that grants blanket  
5 authority for its municipalities to petition for bankruptcy and offers  
6 no opportunity for its municipalities to receive state-level,  
7 prebankruptcy guidance, oversight, or assistance for those  
8 jurisdictions that are truly insolvent and face no other alternative  
9 to bankruptcy.

10 (g) State intervention in local affairs should only occur in  
11 exceptional circumstances and not without a compelling interest  
12 of statewide concern.

13 (h) Given the connection between state allocations and local  
14 budgets, the state has a role in mitigating possible local bankruptcy.

15 (i) It is the duty of all state and local elected officials to ensure  
16 that governments provide essential services to the communities  
17 they are elected to serve.

18 (j) California's taxpayers who rely on public safety, senior,  
19 park, and library services, as well as those who own and operate  
20 businesses in our communities deserve every effort that state and  
21 local government can make to avoid the long-term devastation of  
22 bankruptcy.

23 (k) The California Debt and Investment Advisory Commission  
24 is the appropriate body to provide the expert oversight and guidance  
25 sought by local public agencies who find themselves in a fiscal  
26 crisis, given its current statutory duties to collect municipal finance  
27 data, conduct research, administer educational seminars, and  
28 provide information and technical assistance on behalf of local  
29 public agencies and their finance professionals, and given the  
30 commission's diverse membership that includes state and local  
31 government financial experts.

32 SEC. 2. Section 8860 is added to the Government Code, to  
33 read:

34 8860. (a) The commission shall, upon request of a local public  
35 entity, advise and, if deemed appropriate by the commission, grant  
36 approval to the entity to exercise its rights pursuant to Section  
37 53760, which may include conditions prescribed by the  
38 commission.

39 (b) Upon request under subdivision (a), the local public entity  
40 shall submit all of the following to the commission:

1 (1) A resolution or ordinance, adopted by that governing body  
2 at a public hearing held pursuant to the Ralph M. Brown Act  
3 (Chapter 9 (commencing with Section 54950) of Part 1 of Division  
4 2 of Title 5), that does both of the following:

5 (A) Requests authority pursuant to Section 53760 to petition  
6 the federal bankruptcy court for financial relief under the provisions  
7 of Chapter 9 (commencing with Section 901 of Chapter 11) of the  
8 United States Code.

9 (B) Acknowledges that the state’s fiscal and financial  
10 responsibilities are not changed by the application or the  
11 commission’s decision pursuant to Section 8861.

12 (2) A thorough analysis of the entity’s request to petition under  
13 Chapter 9 (commencing with Section 901 of Title 11) of the United  
14 States Code. In addition to any other information it may provide,  
15 the entity shall do all of the following:

16 (A) Demonstrate that it is or will be unable to pay its undisputed  
17 debts.

18 (B) Demonstrate that it has exhausted all options to avoid  
19 seeking relief under Chapter 9.

20 (C) Detail a specific plan for restoring the soundness of the  
21 entity’s financial plans.

22 (3) An itemization of creditors that may be impaired or may  
23 seek damages as a result of the proposed plan.

24 (4) *Evidence of irreparable harm that may result during the*  
25 *30-day evaluation period, pursuant to subdivision (d), and the 15*  
26 *days allotted for a hearing, pursuant to subdivision (e).*

27 ~~(e) The local entity may request, and the commission chair may~~  
28 ~~approve, an expedited evaluation. The commission chair may~~  
29 ~~approve the expedited evaluation if the entity sufficiently~~  
30 ~~demonstrates a need for improved cashflow or protection from~~  
31 ~~creditors claims. If the request is approved, the expedited~~  
32 ~~evaluation shall be completed within 5 days.~~

33 ~~(d)~~

34 (c) (1) Upon receipt of the information required by subdivision  
35 (b), the commission shall evaluate the information presented and  
36 *within 5 days, notify the local public entity of one of the following*  
37 *results:*

38 (A) *Approval of the request.*

1 (B) *The commission intends to proceed with a further evaluation*  
2 *based on a finding that the local public entity did not provide*  
3 *sufficient evidence pursuant to paragraph (4) of subdivision (b).*

4 (2) *If the commission determines that it will proceed with a*  
5 *further evaluation, pursuant to subparagraph (B) of paragraph*  
6 *(1), the commission shall publish its evaluation within 30 business*  
7 *days, or, in the case of an expedited request pursuant to subdivision*  
8 *(e), within 5 days. In conducting its evaluation, days. If the*  
9 *commission does not respond to the request within five days of*  
10 *receipt of the request, the request shall be deemed approved.*

11 (d) *After noticing the local public agency of the commission's*  
12 *intent to further evaluate the request, the commission staff shall*  
13 *specifically evaluate the extent to which the local public entity has*  
14 *done the following:*

15 (1) *Demonstrated that it has exhausted other remedies.*

16 (2) *Demonstrated that it has taken sufficient steps to reduce the*  
17 *negative consequences of its proposed bankruptcy relief.*

18 (3) *Has anticipated the transfer of service responsibility to other*  
19 *governments or parties and to what extent the entity has*  
20 *documented the consequences for the transfer of municipal and*  
21 *other government services.*

22 (4) *Documented the likely effect a successful petition will have*  
23 *on state and local finances, including the impact on credit access*  
24 *and debt service.*

25 (5) *Has proposed a remedy that is appropriate and proportionate*  
26 *to the entity's fiscal problems.*

27 (e) ~~The~~ *After the commission conducts the evaluation, pursuant*  
28 *to paragraph (2) of subdivision (c) and publishes its evaluation,*  
29 *the commission shall conduct a hearing and publish a decision*  
30 *within 15 days of, but not less than 10 days after, the publication*  
31 *of the staff evaluation conducted pursuant to subdivision (d). The*  
32 *hearing shall be conducted according to the provisions of Section*  
33 *8861. The commission hearing on the application shall be held in*  
34 *convenient proximity of the entity filing the application.*

35 (f) *A governing board of a local public entity may reapply if its*  
36 *request was denied pursuant to Section 8861. In making the*  
37 *reapplication, the local public entity shall adopt another resolution*  
38 *and submit documentation to address the deficiencies identified*  
39 *by the commission pursuant to Section 8861.*

1 (g) A county that has requested approval to file under  
2 subdivision (a) may require local agencies with funds invested in  
3 the county treasury to provide a five-day notice of withdrawal  
4 before the county is required to comply with a request for  
5 withdrawal of funds by that local agency.

6 ~~(g)~~

7 (h) As used in this chapter, “local public entity” means any city,  
8 county, city and county, district public authority, public agency,  
9 or other entity that is a “municipality” within the meaning of  
10 paragraph (40) of Section 101 of Title 11 of the United States  
11 Code, or that qualifies as a debtor under any federal bankruptcy  
12 law applicable to local public entities.

13 SEC. 3. Section 8861 is added to the Government Code, to  
14 read:

15 8861. (a) The commission shall hold a public hearing to  
16 consider a request made pursuant to Section 8860. The hearing  
17 shall provide sufficient time for public testimony.

18 (b) The commission shall, in a recorded vote *on the date of the*  
19 *hearing*, approve or deny the request.

20 (c) If the commission approves a request, it may order the entity,  
21 as a condition of approving the request, to limit the nature and  
22 extent of relief provided through Chapter 9 bankruptcy  
23 proceedings, including all of the following:

24 (1) The commission may limit the changes to a contract.

25 (2) The commission may prohibit the abrogation of contracts.

26 (3) The commission may limit the amount of relief to ensure  
27 the protection of debt service payments.

28 (d) If the commission disapproves a request, the commission  
29 shall adopt specific findings that address the deficiencies of the  
30 application.

31 (e) The hearing shall be subject to the provisions of the  
32 Bagley-Keene Open Meeting Act (Article 9 (commencing with  
33 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2). At  
34 the same time that the notice and agenda for the hearing is posted  
35 to comply with the requirements of the Bagley-Keene Open  
36 Meeting Act, then the commission shall do all of the following:

37 (1) Post the notice in a location in the entity that is freely  
38 accessible to members of the public.

39 (2) Deliver the notice personally, by United States mail, or by  
40 facsimile transmission, to each local newspaper of general

1 circulation whose circulation area reasonably includes the local  
2 public entity.

3 (3) Deliver the notice by United States mail, or by facsimile  
4 transmission, to each radio or television station that has requested  
5 notice in writing.

6 (4) Request publication of the notice in the daily file of each  
7 house of the Legislature at least 24 hours prior to the date of the  
8 meeting, if the Legislature is in session.

9 SEC. 4. Section 8862 is added to the Government Code, to  
10 read:

11 8862. (a) After the commission receives a request pursuant to  
12 Section 8860, the executive director shall record costs incurred by  
13 the commission to make and publish the evaluation pursuant to  
14 Section 8860 and conduct the hearing required under Section 8861.  
15 The director shall report those costs to the commission at the next  
16 regularly scheduled commission hearing.

17 (b) Upon denial of the request, the executive director or  
18 commission may assess the requesting entity a fee to cover some  
19 or all the costs associated with making the findings and conducting  
20 the hearing. Fee revenue shall be deposited in the California Debt  
21 and Investment Advisory Commission Fund.

22 (c) The commission may propose regulations to govern the  
23 request and review process required under Sections 8860 and 8861.

24 SEC. 5. Section 8863 is added to the Government Code, to  
25 read:

26 8863. In enacting Sections 8860, 8861, 8862, and the changes  
27 in Section 53760, the state assumes no new or additional fiscal  
28 responsibilities for local entities that may apply to the commission  
29 for review pursuant to this chapter.

30 SEC. 6. Section 8864 is added to the Government Code, to  
31 read:

32 8864. This chapter shall only apply to a local public entity on  
33 or after the effective date of this chapter.

34 SEC. 7. Section 8865 is added to the Government Code, to  
35 read:

36 8865. *If a member of the California Debt and Investment*  
37 *Advisory Commission is also employed as a local government*  
38 *finance officer by an entity requesting approval pursuant to Section*  
39 *8860, the Treasurer shall replace that member, for purposes of*  
40 *the application of the local government that also employs the*

1 *member, with a person employed by a city, county, or city and*  
2 *county, within the state, experienced in the issuance and sale of*  
3 *municipal bonds and nominated by associations affiliated with*  
4 *these agencies, to preside over that application.*

5 ~~SEC. 7.~~

6 SEC. 8. Section 53760 of the Government Code is amended  
7 to read:

8 53760. (a) Except as otherwise provided by statute, a local  
9 public entity in this state may, with the approval of the California  
10 Debt and Investment Advisory Commission, under the terms and  
11 conditions that the commission may impose pursuant to Section  
12 8861, file a petition and exercise powers pursuant to applicable  
13 federal bankruptcy law.

14 (b) As used in this section, “local public entity” means any  
15 county, city, district, public authority, public agency, or other  
16 entity, without limitation, that is a “municipality,” as defined in  
17 paragraph (40) of Section 101 of Title 11 of the United States Code  
18 (bankruptcy), or that qualifies as a debtor under any other federal  
19 bankruptcy law applicable to local public entities.